

fore, must be charged with the whole amount of the proceeds of the sales made and reported by him.

But although a negligent or unfaithful trustee may be thus held liable for the whole amount of any money which he undertook and became bound to collect, and of which he has failed to give any account whatever; yet the court, by holding him liable, would not be understood as thereby, in any case, exonerating any purchaser, surety, or other person, or subject, from any liability or lien that might have been enforced for the recovery of the same money. The party interested may, in the first instance, obtain satisfaction from such security; or the delinquent trustee may be first made to pay, and be then left to take the place of the claimant, and, so far as in equity he may be permitted to do so, to seek relief from others as he can.

Upon these principles, therefore, it is Ordered, that the exceptions of *Eli Marriott* and others, are sustained, and that of *Stockett* and wife is rejected. And the auditor's report, and statements No. 1, 2, 3, and 4, are approved; and the statements No. 5, 6, and 7, are rejected. And it is further Ordered, that the trustee, *Nicholas Brewer*, jun'r, forthwith proceed to make sale of the real estate of the late *Basil Brown*, as directed by the orders of the 6th of July, 1826, and of the 8th of March, 1827.

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On the 20th of March, 1828, *Rezin Hammond*, the displaced trustee, filed his petition, in which he states, that being the executor of *Matthias Hammond*, who was administrator of *Basil Brown*, and trustee for the sale of the real estate of *Basil Brown*, he had paid to *Eli Marriott* the sum of \$138, in part satisfaction of his claim against the estate of the late *Basil Brown*, to the amount of which he claims to be considered as the equitable assignee of *Eli Marriott*; and prays that the present trustee may be ordered to pay the amount to him out of the share awarded to *Marriott*. This petition was submitted without argument.

24th March, 1828.—BLAND, Chancellor.—At no period, and in no part of all these proceedings does it appear, nor has it before been even intimated, that this petitioner had any such claim as that now set up by him; or any claim whatever against *Eli Marriott*. It does not very distinctly appear, whether the petitioner claims in his own right, or in his representative character of executor. But in either way, if the claim has any real existence whatever, it is a mere legal one; it has not a shadow of equity about it. It is for